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BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

Case No. PT-2007-2107

JOSHUA PAUL SIMPSON  
1510 Carson Lane  
Oceano, CA 93455

OAH No. 2009030885

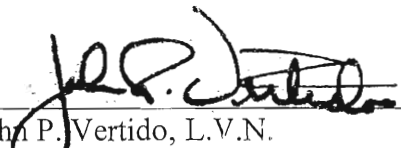
Applicant for Psychiatric Technician License  
  
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on October 3, 2009.

IT IS SO ORDERED this 3<sup>rd</sup> day of September, 2009.

  
\_\_\_\_\_  
John P. Vertido, L.V.N.  
President

BEFORE THE  
BOARD OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues of:

JOSHUA PAUL SIMPSON,

Respondent.

Case No. PT-2007-2107

OAH Case No. L2009030885

**PROPOSED DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in San Luis Obispo, California, on July 6, 2009.

Rene Judkiewicz, Deputy Attorney General, represented Complainant, Teresa Bello-Jones, J.D., M.S.N., R.N.

Steven B. Bassoff, Attorney at Law, represented respondent.

Complainant seeks to deny respondent's application for licensure as a psychiatric technician because he suffered two criminal convictions. Respondent presented evidence in mitigation and rehabilitation in support of licensure.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant filed the Statement of Issues in her official capacity as Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs (Board).

2. On March 17, 2008, respondent filed an application for licensure as a psychiatric technician. He disclosed the convictions set forth in factual finding numbers 3 and 4. The Board denied the application and respondent filed a timely request for hearing.

3. a. On March 14, 2003, in the Superior Court, County of San Luis Obispo, State of California, in case number M000338035, respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 594, subdivision (b)(1) (vandalism), a misdemeanor. The court placed respondent on bench probation for two years on terms and conditions that included payment of restitution and payment of \$592.50 in fines and fees.

b. The facts and circumstances surrounding the conviction are that, on February 13, 2003, at approximately 2:00 a.m., officers responded to a complaint of a public disturbance at a hotel. On arrival, they noticed three individuals running around in the parking lot of the hotel. The three were staying in a room they shared with respondent. The officers met with respondent in his room and he was uncooperative. Respondent was thereafter charged and arrested for public intoxication. As he was being escorted into the police vehicle, respondent kicked the vehicle, causing a large dent in the rear quarter panel of the car. In these circumstances, the crime is substantially related to the qualifications, functions and duties of a psychiatric technician.

4. a. On June 3, 2003, in the Superior Court, County of San Luis Obispo, State of California, in case number M000342386, respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 484, subdivision (a) (petty theft) and Business and Professions Code section 25662, subdivision (a) (minor in possession of alcohol), misdemeanors. The court placed respondent on bench probation for two years on terms and conditions that included service of one day in county jail, with credit for one day served, suspension of his driver's license, restitution, and payment of a \$900 fine

b. On this occasion, May 31, 2003, at about 2:30 a.m., respondent, after drinking alcoholic beverages with friends, took beer from a Chevron Gas Station without paying for it.

c. This conviction involves dishonest conduct for personal gain and, therefore, is substantially related to the duties, qualifications, and functions of a psychiatric technician.

5. Respondent complied with the terms and conditions of probation, and received early termination of probation in both cases, on January 14, 2005.

6. Respondent expressed regret for the actions that led to his convictions. In both instances, respondent had consumed alcoholic beverages, which had impacted his judgment. Respondent was 18 years old at the time. He had dropped out of high school during his senior year, and did not have much direction in his life. Respondent no longer associates with the individuals with whom he was at the time of his arrests, and has a more stable life. He resides with his girlfriend of five years, and spends his time working or in activities with her and other friends. Respondent does not consume alcoholic beverages in excess.

7. On October 5, 2006, respondent passed the required examinations and obtained his high school equivalent diploma. One year later, he completed the psychiatric technician program at Cuesta Community College. Respondent worked at Atascadero State Hospital, first as a student trainee and then as a pre-licensing psychiatric technician for approximately two years, until July 5, 2009. He discharged his duties at the hospital in a satisfactory manner, but was not retained because of his lack of licensure.

8. A coworker of two-years. Peri Sue Hughes, who has been a psychiatric technician for 35 years, wrote a letter in respondent's behalf, describing him as one of the most responsible and conscientious people she knows.

### LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for licensure pursuant to Business and Professions Code sections 480, subdivision (a)(1), 4521, subdivisions (a) and (f), and California Code of Regulations, title 16, section 2578, in that he was convicted of crimes substantially related to the qualifications, functions, and duties of a psychiatric technician, by reason of factual finding numbers 3 and 4.

2. All evidence presented in mitigation and rehabilitation has been considered. In brief, the convictions occurred more than six years ago, when respondent was young and immature. He is sorry about the conduct that led to the convictions. He has changed his life, and embarked on a new career that he enjoys. Respondent obtained a high school equivalent diploma, completed the Cuesta College psychiatric technician program, and has satisfactorily worked at Atascadero State Hospital for approximately two years. His life is stable and he does not consume alcoholic beverages in excess. In these circumstances, the order that follows is necessary and sufficient for the protection of the public.

### ORDER

The application by Joshua Paul Simpson for licensure as a psychiatric technician is granted. However, the license shall be immediately revoked; provided, the revocation is stayed for three years on the following terms and conditions.

1. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, including all statutes and regulations governing the license. Respondent shall submit, in writing, a full and detailed account of any and all violations of the law, including alleged violations, to the Board within five days of occurrence. To ensure compliance with this condition, respondent shall submit fingerprints through the Department of Justice and Federal Bureau of Investigation within 30 days of the effective date of the decision, unless the Board determines that fingerprints were previously submitted by the respondent to the Board. Respondent shall also submit to the Board a recent 2" x 2" photograph of himself within 30 days of the effective date of the decision. If respondent is under a criminal court order, including probation or parole, and the order is violated, it shall be deemed a violation of these probation conditions.

2. COMPLIANCE WITH PROBATION PROGRAM. Respondent shall fully comply with the conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Probation Program. Upon successful completion of probation, the respondent's license will be fully restored.

3. SUBMIT WRITTEN REPORTS. Respondent shall submit or cause to be submitted, under penalty of perjury, any written reports, declarations and verification of actions as required by the Board or its representatives. These reports or declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

In the first report, respondent shall provide a list of all states and territories where he has ever been licensed as a vocational/practical nurse, psychiatric technician, or registered nurse. Respondent shall provide information regarding the status of each license and any change in license status during the period of probation. Respondent shall inform the Board if he applies for or obtains a new nursing or psychiatric technician license during the period of probation. Respondent shall provide a copy of the Board's decision to the regulatory agency in every state and territory in which he has applied for or holds a vocational/practical nurse, psychiatric technician and/or registered nurse license.

4. NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S). Respondent shall notify the Board, in writing, within five days of any change in address or telephone number(s). Respondent's failure to claim mail sent by the Board may be deemed a violation of these probation conditions.

5. NOTIFICATION OF RESIDENCY OR PRACTICE OUTSIDE OF STATE. Respondent shall notify the Board, in writing, within five days, if he leaves California to reside or practice in another state. Periods of residency or practice outside of California shall not apply toward a reduction of this probation time period. If respondent resides or practices outside of California, the period of probation shall be automatically extended for the same time period he resides or practices outside of California. The respondent shall provide written notice to the Board within five days of any change of residency or practice. Respondent shall notify the Board, in writing, within five days, upon his return to California.

6. MEETINGS WITH BOARD REPRESENTATIVE(S). Respondent shall appear in person at meetings as directed by the Board or its designated representatives.

7. NOTIFICATION TO EMPLOYER(S). When currently employed or applying for employment in any capacity in any health care profession, respondent shall notify his employer of the probationary status of respondent's license. This notification to the respondent's current health care employer shall occur no later than the effective date of the Decision. The respondent shall notify any prospective health care employer of his probationary status with the Board prior to accepting such employment. At a minimum, this notification shall be accomplished by providing the employer or prospective employer with a copy of the Board's Accusation and Disciplinary Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Respondent shall cause each health care employer to submit to the Board all performance evaluations and any other employment related reports as required by the Board. Respondent shall notify the Board, in writing, of any difficulty in securing employer reports within five days of such an event.

Respondent shall notify the Board, in writing, within five days of any change in employment status. Respondent shall notify the Board, in writing, if he is terminated or separated, regardless of cause, from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination or separation.

8. EMPLOYMENT REQUIREMENTS AND LIMITATIONS. Respondent shall work in his licensed capacity in the state of California. This practice shall consist of no less than six continuous months and of no less than 20 hours per week.

Respondent shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Board approved continuing education course except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

9. SUPERVISION REQUIREMENTS. Before commencing or continuing employment in any health care profession, respondent shall obtain approval from the Board of the supervision provided to the respondent while employed.

Respondent shall not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) or supervising psychiatric technician during the period of probation except as approved, in writing, by the Board.

10. COMPLETION OF EDUCATIONAL COURSE(S). Respondent, at his own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) no later than the end of the first year of probation. The coursework shall be in addition to that required for license renewal. The Board shall notify the respondent of the course content and number of contact hours required. Within 30 days of the Board's written notification of assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study. Upon successful completion of the course, respondent shall submit "original" completion certificates to the Board within 30 days of course completion.

11. MAINTENANCE OF VALID LICENSE. Respondent shall, at all times, maintain an active current license with the Board including any period of suspension. If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two years from the effective date of the Board's decision.

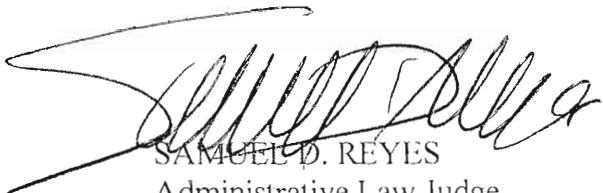
Should respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

12. LICENSE SURRENDER. During probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the conditions of probation, respondent may surrender his license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request without further hearing. Upon formal acceptance of the tendered license, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A licensee who surrenders his license may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision for the surrender: three years for reinstatement of a license surrendered for any reason other than a mental or physical illness; or one year for a license surrendered for a mental or physical illness.

13. VIOLATION OF PROBATION. If respondent violates the conditions of his probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of the respondent's license. If during probation, an accusation or petition to revoke probation has been filed against the respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

DATED: 8/3/09

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

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of the State of California  
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6

7 Attorneys for Complainant

8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC**  
11 **TECHNICIANS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Statement of Issues Against:

Case No. PT-2007-2107

14 JOSHUA PAUL SIMPSON  
15 1510 Carson Lane  
16 Oceano, CA 93455

**STATEMENT OF ISSUES**

Psychiatric Technician Licensure Applicant

Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this  
20 Statement of Issues solely in her official capacity as the Executive Officer of the Bureau of  
21 Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.
- 22 2. On or about March 17, 2008, the Bureau of Vocational Nursing and  
23 Psychiatric Technicians (Bureau) received an application for Psychiatric Technician Licensure  
24 from Joshua Paul Simpson (Respondent). On or about December 31, 2007, Joshua Paul Simpson  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Bureau denied the application on June 11, 2008.

27 **JURISDICTION**

- 28 3. This Statement of Issues is brought before the Director of Consumer



1 Affairs (Director) for the Bureau of Vocational Nursing and Psychiatric Technicians, under the  
2 authority of the following laws. All section references are to the Business and Professions Code  
3 unless otherwise indicated.

#### 4 STATUTORY PROVISIONS

5 4. Section 101.1(b) of the Code states:

6 "(1) In the event that any board, as defined in Section 477, becomes  
7 inoperative or is repealed in accordance with the act that added this section, or by subsequent  
8 acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties,  
9 powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of  
10 that board and its executive officer.

11 "(2) Any provision of existing law that provides for the appointment of board  
12 members and specifies the qualifications and tenure of board members shall not be implemented  
13 and shall have no force or effect while that board is inoperative or repealed. Every reference to  
14 the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to  
15 the department."

16 5. Section 118, subdivision (b), of the Code provides that the suspension,  
17 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to  
18 proceed with a disciplinary action during the period within which the license may be renewed,  
19 restored, reissued or reinstated.

20 6. Section 477 of the Code states:

21 As used in this division:

22 "(a) "Board" includes "bureau," "commission," "committee," "department,"  
23 "division," "examining committee," "program," and "agency."

24 "(b) "License" includes certificate, registration or other means to engage in a  
25 business or profession regulated by this code."

26 7. Section 480 states, in pertinent part:

27 "(a) A board may deny a license regulated by this code on the grounds that the  
28 applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 4521 of the Code states:

"The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)) for any of the following reasons:

"(a) Unprofessional conduct, which includes but is not limited to any of the following:

• • • •

"(f) Conviction of any offense substantially related to the qualifications, functions, and duties of a psychiatric technician, in which event the record of the conviction shall be conclusive evidence of the conviction. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline."

## REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 2578, states:

“For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed psychiatric technician if to a substantial degree it evidences present or potential unfitness of a licensed psychiatric technician to perform the functions authorized by his license

1 in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall  
2 include but not be limited to those involving the following:

3           “(c) Violating or attempting to violate, directly or indirectly, or assisting in or  
4 abetting the violation of, or conspiring to violate any provision or term of Chapter 10, Division 2  
5 of the Business and Professions Code.”

6                           **FIRST CAUSE FOR DENIAL OF APPLICATION**

7                           **(Convictions of Substantially Related Crimes)**

8           11. Respondent's application is subject to denial under section 4521,  
9 subdivisions (a) and (f), and 480, of the Code, in conjunction with California Code of  
10 Regulations, title 16, section 2578, in that Respondent has been convicted of crimes substantially  
11 related to the qualifications, functions or duties of a licensed psychiatric technician, as follows:

12                   a. On or about March 14, 2003, Respondent was convicted by the  
13 court on a plea of nolo contendere on one count for violating Penal Code section 594,  
14 subdivision (b)(1) (vandalism), a misdemeanor, in the criminal proceedings entitled *The People*  
15 *of The State of California v. Joshua Paul Simpson* (Super. Court San Luis Obispo County, 2003,  
16 No. M338035). Respondent was placed on two (2) years probation and was ordered to pay a fine  
17 in the amount of \$500.00 (later modified/reduced to \$400.00).

18                   b. On or about June 3, 2003, Respondent was convicted by the court  
19 on pleas of nolo contendere for violating one count of Penal Code section 484, subdivision (a)  
20 (theft), a misdemeanor, and one count for violating Business and Professions Code section  
21 25662, subdivision (a) (minor in possession of alcohol), a misdemeanor, in the criminal  
22 proceedings entitled *The People of The State of California v. Joshua Paul Simpson* (Super. Court  
23 San Luis Obispo County, 2006, No. M342386). Respondent was placed on two (2) years  
24 probation, his driver's license was suspended for one (1) year and he was ordered to pay a fine in  
25 the amount of \$900.00.

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**PRAYER**

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WHEREFORE, Complainant requests that a hearing be held on the matters herein  
alleged and that following the hearing the Director of Consumer Affairs issue a decision:

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1. Denying the application of Respondent for Psychiatric Technician

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Licensure, and

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2. Taking such other and further action as deemed necessary and proper.

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DATED: December 12, 2008

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TERESA BELLO-JONES, J.D., M.S.N., R.N.

13

Executive Officer

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Bureau of Vocational Nursing and Psychiatric Technicians

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Department of Consumer Affairs

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State of California

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Complainant

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